IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2050 OF 2003

IN

SUIT NO. 54 OF 1997

Babubhai Jaishankar Trivedi .....**Plffs.**
vs.
Smt. Sushma Virendra Pal
Verma and Ajay Bardhan Smt. Sudha
Bardhan .....**Defnds.**

NOTICE OF MOTION NO. 2089 OF 2003
IN
SUIT NO. 54 OF 1997

Babubhai Jaishankar Trivedi .....**Plffs.**
vs.
Smt. Sushma Virendra Pal
Verma and Ajay Bardhan Smt. Sudha
Bardhan .....**Defnds.**

NOTICE OF MOTION NO. 3273 OF 2003
IN
SUIT NO. 54 OF 1997

Babubhai J. Trivedi .....**Plffs.**

vs.
Smt. Sushma Virendra Pal
Verma and Fattaram Parihar .....**Defnds.**

NOTICE OF MOTION NO. 3272 OF 2003
IN
SUIT NO. 54 OF 1997

Babubhai J. Trivedi .....**Plffs.**
vs.
Smt. Sushma Virendra Pal
Verma and Sohanlal Meghwali .....**Defnds.**

D.H. Mehta i/by R.D. Suvarna
for the plaintiffs.
Rubia Taneja i/b. Jhangiani Narula and Associates
for the defendants.
Court Receiver present.

CORAM: S.U. KAMDAR, J.

DATE : 17th January,2006.

P.C. :.

1. All these notice of Motions have been taken out by the flat purchasers for a relief that the court Receiver appointed in order dated 18.10.2002

passed by Justice, D.K. Deshmukh to be discharged with a direction to restore possession to the applicant without passing accounts.

2. In the present case the disputes are between the plaintiff and the defendant no.1. The suit has been filed by the plaintiff inter-alia seeking relief of declaration that the development agreement executed with the defendant no.1 dated 25.11.1987 and the power of attorney dated 9.5.1989 has been validly cancelled and or revoked and the defendant has no right title and interest whatsoever upon the suit plot of land or any part thereof and further reliefs are also sought in the amended prayer b(1) to b(5) inter alia seeks rights in respect of the suit flat No. 104, 105, 401, 402 and 501. It has been prayed that the sale which has been effected by the defendant is illegal, null and void and not binding on the plaintiffs. It is the case of the plaintiff that the said flats are sold contrary to the ad-interim order dated 9.1.1997 passed by the Hon’ble Court. There is no dispute that there is an agreement executed

subsequent to the date of the filing of the suit by and between the parties. However learned counsel for the applicants contends that in view of the finding given by Lodha, J in Contempt Petition no. 149 of 1998 the present notice of motion should be made absolute. It is because the court has declined to issue an order of contempt on the allegations that the said flats are sold in contravention of the ad-interim order dated 9.1.97. However in para- 8 of the said order the learned single judge has specifically observed as under :

> 8. Since the notice of motion is pending any observation made herein shall not influence the disposal of notice of motion

3. Thus I am not impressed with the argument that the finding of the learned judge in contempt proceedings are binding on me in the present proceedings motion so as to grant the notice of

motion straight away. In my opinion on facts of the present case it is an admitted position that the suit flats are purchased subsequent to the filing of the suit . As it is a settled law that any transaction which takes place during the pendency of the lis are always subject to the final outcome of the suit proceedings and if the plaintiffs succeeds then the said transactions are required to be treated as null and void. The plaintiffs has in the present suit has specifically challenged the said transaction of flat purchased by these five applicants by carrying out necessary amendments and contended that the sale entered in their favour is null and void. Learned counsel for the applicant has further contended that the plaintiffs have permitted the discharge of the Court Receiver inrespect of various other flats where the plaintiffs has not raised the dispute. I am not impressed with this argument also, because by consent of the parties any order can be obtained. The other suits where the plaintiffs are not disputing the rights of the applicant, by consent of the parties the orders are passed

discharging the Court Receiver. In the present case the plaintiff is specifically disputing the agreement in favour of these four applicants who have taken out various applications for discharge of court Receiver. In my opinion at the interim stage it is not possible to discharge the Court Receiver. In that light of the matter I am not inclined to grant the relief. Motion is accordingly dismissed.

4. However it is clarified that the applicants will be entitled to continue to remain in possession of the property as agent of the Court Receiver. Applicants shall execute the necessary agency agreement with the Court Receiver. The Court Receiver while executing the agency agreement shall not insist upon any payment of security. However the Court Receiver will fix the royalty amount as due and payable by the defendants but subject to the final outcome of the suit. All the motions are disposed off accordingly.

sd/-

(S.U.KAMDAR, J)